

California Regional Water Quality Control Board  
North Coast Region

ORDER NO. R1-2002-0011

TIME SCHEDULE ORDER

FOR

MICHAEL MENGES  
MACDOEL GENERAL STORE

Siskiyou County

The California Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Water Board) finds that:

1. On December 28, 1994 Michael Menges (hereinafter referred to as "Discharger") had four petroleum underground storage tanks (UST) removed from the Macdoel General Store site (Site), identified by Siskiyou County Assessor's parcel numbers 35-024-060, 35-024-120 and 35-024-140.
2. Petroleum hydrocarbon contamination was observed at the time of UST removal. Laboratory analysis of a soil sample collected from the UST excavation pits confirmed petroleum contamination in soil. Analytical results of the soil sample collected on December 28, 1994 quantified total petroleum hydrocarbons as gasoline at 1,900 ug/g (parts per million, or ppm), toluene at 5.6 ppm, ethyl benzene at 3.6 ppm, and total xylenes at 50 ppm.
3. Regional Water Board staff requested a workplan for investigation of petroleum contamination on May 9, 1995. The requested investigation workplan was submitted on December 2, 1996, and approved by Regional Water Board staff on March 14, 1997. A report describing implementation of the site investigation workplan was required to be submitted by July 31, 1997.
4. Additional requests for site investigation by Regional Water Board staff occurred on January 23, 1998, April 12, 1999, October 19, 1999, and January 19, 2000. The Discharger responded to these requests on December 16, 1999 in which he stated that financial considerations prevented him from conducting an investigation, and on February 13, 2000 in which he stated that financial and health considerations prevented him from conducting the work at the Site.
5. Pursuant to California Water Code (CWC) Section 13267(b), the Executive Officer of the Regional Water Board issued orders to the Discharger on June 21, 2000, August 10, 2000, and December 28, 2000 requiring submittal of a completed site investigation report or a new workplan for the investigation of petroleum hydrocarbon discharges at the Site. No response to Section 13267(b) orders were received from the Discharger.

6. No report describing a completed site investigation or workplan for a new site investigation has been submitted. The Discharger is in violation of CWC Section 13267(b).
7. Due to noncompliance with Regional Water Board directives, the Discharger was removed from the Underground Storage Tank Cleanup Fund (USTCF) priority list on two different occasions. On January 17, 1996 the Discharger was initially placed on the USTCF priority list, and ruled ineligible for reimbursement on September 19, 1996. The Discharger was reinstated on the priority list on June 20, 1997, however, further noncompliance resulted in a second ineligibility ruling and removal from the priority list on March 31, 1998.
8. On July 26, 2001 a hearing was held by the Regional Water Board in the matter of Michael Menges for violations of Section 13267(b) of the California Water Code. At the hearing, the Regional Water Board continued the public hearing and directed staff to prepare a Time Schedule Order to be considered by the Regional Water Board during the continued public hearing to be held on September 27, 2001, however, due to a lack of a Board quorum the hearing was continued until January 24, 2002.
9. Section 13308(a) of the California Water Code states that "If the regional board determines there is a threatened or continuing violation of any cleanup or abatement order, cease and desist order, or any order issued under section 13267 or 13338, the regional board may issue an order establishing a time schedule and prescribing a civil penalty which shall become due if compliance is not achieved in accordance with that time schedule."
10. The Discharger has violated three CWC section 13267(b) orders for which the Regional Water Board may issue an order establishing a time schedule and prescribing a civil penalty which shall become due if compliance is not achieved in accordance with the time schedule. The amount of the civil penalty must be based upon the amount reasonably necessary to achieve compliance, and cannot include any amount intended to punish or redress previous violations. Additionally, the amount of the penalty may not exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.
11. If the Discharger fails to comply with the time schedule contained in this Order, he shall be liable civilly in an amount not to exceed the amount prescribed herein in this Order, a complaint may be issued pursuant to Water Code Section 13323(a) alleging the violations(s) of the Time Schedule Order and setting forth the amount of civil liability due under this Order.
12. An evidentiary hearing on this matter was held before the Regional Water Board on January 24, 2002 at the North Coast Regional Water Board, 5550 Skylane Boulevard, Suite A, Santa Rosa, California. The Regional Water Board considered all evidence presented at the hearing.

13. The adoption of a Time Schedule Order for Administrative Civil Liability is an enforcement action, and is therefore exempt from provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et. seq.) pursuant to Title 14, California Code of Regulations, Section 15321.

THEREFORE, IT IS HEREBY ORDERED that the Discharger shall complete the following tasks in accordance with the corresponding due dates or else be subject administrative civil penalty as follows:

Task	Due Date	Penalty Assessment Date	Civil Penalty per occurrence
1. Implement approved workplan to investigate petroleum contamination	March 15, 2002	April 15, 2002	\$10,000
2. Submit report of site investigation for petroleum contamination.	June 15, 2002	July 15, 2002	\$10,000
3. Submit a task and schedule for additional needed work	June 15, 2002	July 15, 2002	\$10,000

If the Discharger cannot meet any of the above stated due dates, a request for a time extension must be submitted in writing, that explains the reason the due date cannot be met and proposes a date when that task will be accomplished. Due dates extended by the Executive Officer may also include a correspondingly revised penalty assessment date.

Certification

I, Susan A. Warner, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on January 24, 2002.

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Susan A. Warner  
Executive Officer